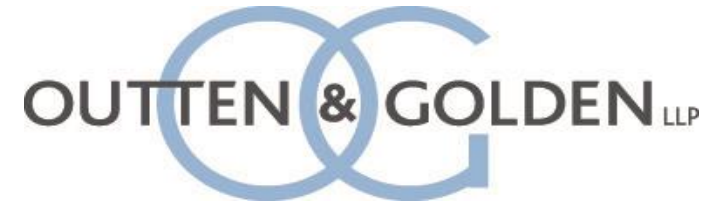


The College  
of Labor and  
Employment  
Lawyers

LEADERSHIP FOR GREATER PURPOSE

# THE COLLEGE IS GOING VIRTUAL:

## Best Practices for Remote Labor & Employment Depositions



Moderator



**LOREN GESINSKY**  
Partner  
Seyfarth Shaw LLP

Panelists



**GREG CASSIN**  
Director of Operations  
Trial Technology  
U.S. Legal Support



**MELISSA S. WOODS**  
Partner  
Cohen Weiss and Simon  
LLP



**DOUGLAS EVANS DEXTER**  
Partner  
Farella Braun +  
Martel LLP



**GREG CASSIN**  
Director of Operations  
Trial Technology  
U.S. Legal Support



Remote attendance for  
depositions, arbitrations  
and mediations



Secure and dedicated virtual  
room for unlimited  
participants



Technical support for  
duration of  
proceedings



Easy setup and  
connection



Remote Court  
Reporter & Text  
Streaming



Ability to record  
proceedings





# AUDIO SETTINGS

## preferences and tips



Enter Full Screen

Choose ONE of the audio conference options

Phone Call

**Computer Audio**

Call Me

**Join with Computer Audio**

Test Speaker and Microphone

☐ Automatically join audio by computer when joining a meeting

Caroline Sprance



## **SPEAKER VIEW** and video recording of remote depositions

Greg Cassin



Caroline Sprance



John Schmitzer

Elizabeth Wells



John Schmitzer



**GALLERY VIEW**  
and video preferences that  
optimize view of participants  
and exhibits



Greg Cassin











Caroline Sprance

Elizabeth Wells



Participants (3)

-  Greg Cassin (Host, me)  
-  Caroline Sprance  
-  Elizabeth Wells  

Invite

Mute All

Unmute All

...



**PARTICIPANTS WINDOW** for  
identifying who is in the  
deposition, security and the  
waiting room feature

Greg Cassin



Caroline Sprance



John Schmitzer

Elizabeth Wells

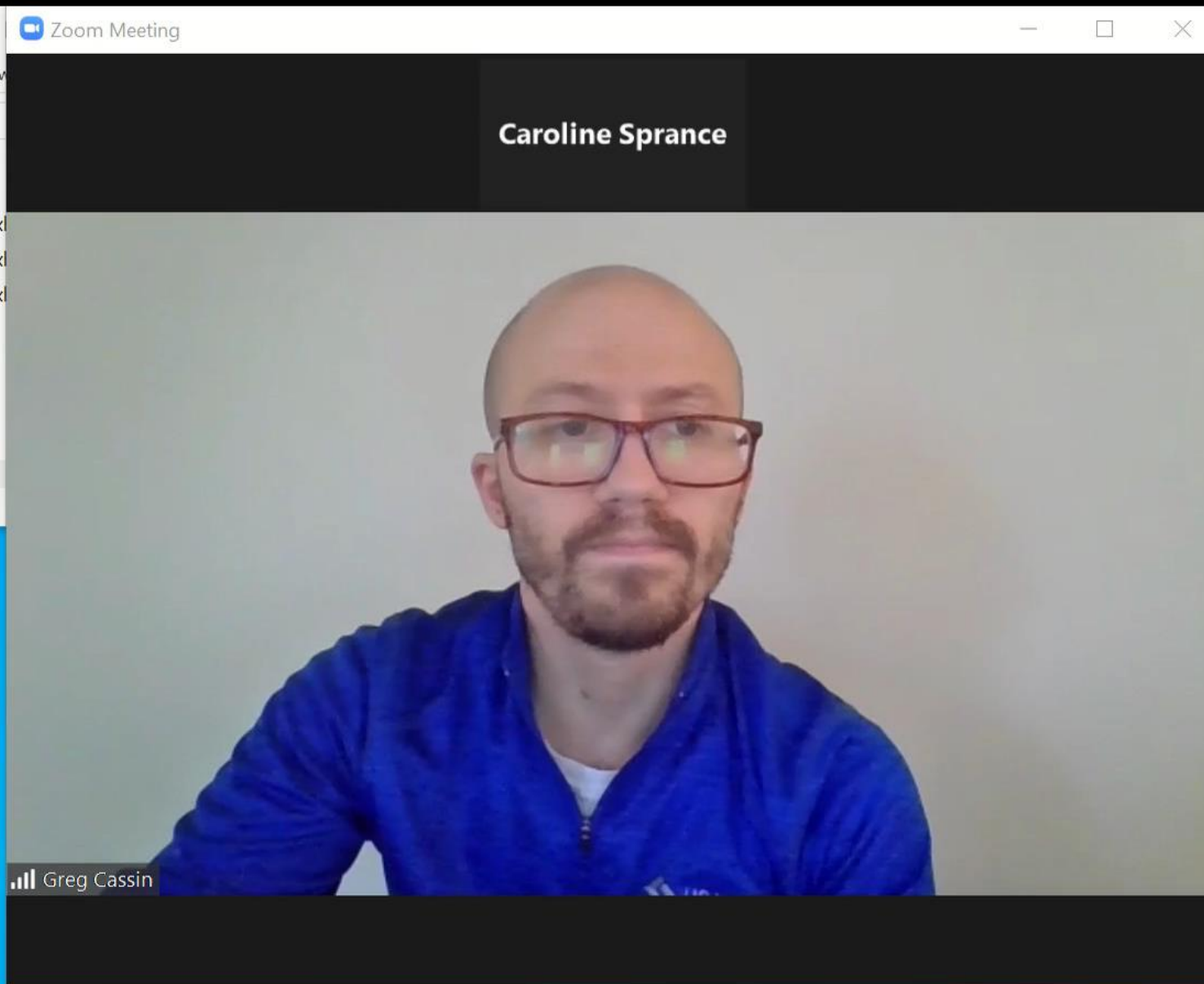


Caroline Sprance



# CHAT WINDOW

for sending and receiving  
exhibits





## SHARE SCREEN

on screen exhibit annotations  
and integrating exhibit  
presentation software



Participants (3)

- Greg Cassin (Me)
- Caroline Sprance (Host)
- Witness

[Invite](#) [Mute Me](#) [Raise Hand](#)

Zoom Group Chat

From Caroline Sprance to Everyone:

Smith Exhibit 31.PDF  
49.65 KB

[Open File](#) [Find in Folder](#)

From Caroline Sprance to Everyone:

Smith Exhibit 32.PDF  
42.61 KB

[Open File](#) [Find in Folder](#)

To: [Everyone](#) [File](#)

Type message here...



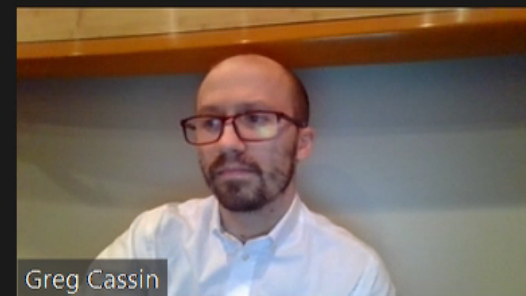
## TRIAL PROGRAM integrations for

Provide additional **emphasis** or **focus** for the witness

**Highlight** areas of a video

U.S. Legal Support **deposition technicians** available

**Trial Director** and other programs



Greg Cassin

**Caroline Sprance**



# ONLINE EXHIBIT BINDERS

using InstantExhibit+ for file sharing

★ Favorites
SH Shana Holton Co-owner



## REALTIME TRANSCRIPT in a remote deposition

**IRIDI Connected** find... Case

Notes: Add Edit Del Marks Notes Del Marks

10 A. He is SPWERP ET ring.  
11 Q. No it's not an enter RE TAEUGS. It's  
12 a straight reading by the author. Now, this begins,  
13 the reading begins -- let's see. It would begin  
14 with the word "interesting." I think -- go back. Let me  
15 find I want to go back to where this discussion  
16 begins. Okay. Let's go to four five five one. This  
17 is in reference to Plaintiffs' Exhibit 25. Why don't  
18 you put that in front of you, sir. Let's now go to  
19 the next page. Okay. It's the next page. He  
20 says -- let's go to four five five three. Okay. So  
21 I read, "I note at the top that he made a reference,  
22 file MSO. So let's now -- I read -- 21, beginning  
23 there. Could you please -- I'm asking Mr. Eisner a  
24 few weeks ago, could you please read the first three  
25 lines?. Well first of all, they are all quotation  
39:1 marks. So I'm quoting Gary Wilson here.  
2 Let's go to the next  
3 word is "interesting." Keep Demo Event ing to  
4 read my handwriting. It says -- he says I think,  
5 quote, hard to put in summary in and out of focus.  
6 These are all quote marks. Wanted to talk. Got  
7 moved forward. And then I asked him to go on.  
8 Following along with me, sir?  
9 A. I am, yes.  
10 Q. Okay. Attitude in general down  
11 to the last word. I could read okay. Attitude in  
12 general. Wounded animal in a corner. That is a  
13 quotation. That G W just means that's what Gary  
14 Wilson said. Again, Eisner is commenting. Question.  
15 Keep going.  
16 "Answer: Loyal friend. Devastating  
17 even I me. Sense work. I don't know. Blames  
18 problem on M D E and people around me. Me and M D E  
19 are the same person

Serif 14 Black White WS TS

Zoom

**Caroline Sprance**

Zoom Group Chat

From Me to Everyone:

Smith Exhibit 30.PDF 198.36 KB

Greg Cassin

To: Everyone

Type message here...



## BREAKOUT ROOMS

for secure and private  
conversations



Greg Cassin - Host



John Schmitzer



Travis Jewell

Caroline Sprance

Gallery View

Participants (4)

- GC Greg Cassin - Host (Host, me)
- CS Caroline Sprance
- TJ Travis Jewell
- JS John Schmitzer

Cancel the Spotlight Video

Breakout Rooms - Not Started

Breakout Room

Assign

Firm 2

Assign

Recreate

Options

Add a Room

Open All Rooms



Travis Jewell

End Meeting

Invite Mute All Unmute All

# REMOTE DEPOSITIONS



**MELISSA S. WOODS**

Partner

Cohen Weiss and Simon LLP





# Getting the Other Side to Agree to All-Remote Depositions

- A. Let the other side know remote depositions are allowed under the relevant rules (but confirm whether you need a court order, stipulation, or specific notice)**
- Federal rules → Parties must stipulate or obtain a court order to conduct a remote deposition.
    - Fed. R. Civ. P. 30(b)(4); NY CPLR 3113(d); DC RCP 30(b)(4)
  - May differ by jurisdiction, i.e. Illinois + California → Party not required to obtain consent, may simply state that the deposition will be remote in the notice.
    - Ill. Sup. Ct. R. 206(h); CA CCP 2025.310(a)



## Getting the Other Side to Agree to All-Remote Depositions

- B. Let the other side know that courts have approved all-remote depositions during the pandemic (but confirm whether the court reporter can swear the witness in remotely or if that needs a stipulation too).**
- Example: California - Governor Newsom issued an Executive Order on March 20, 2020 allowing the Judicial Branch to permit remote depositions in every case and electronic service of process; leaves to Judicial Branch the discretion to make any modifications to practice or procedure it deems necessary to continue conducting business of the courts

(<https://www.publicjustice.net/wp-content/uploads/2020/03/Governor-of-California-Executive-Order-Issued-March-27-2020.pdf>)



## Getting the Other Side to Agree to All-Remote Depositions

**B. Let the other side know that courts have approved all-remote depositions during the pandemic (but confirm whether the court reporter can swear the witness in remotely or if that needs a stipulation too).**

- Example: New York
  - *Sinceno v. Riverside Church* (SDNY March 18, 2020) (provides that all depositions may be taken by telephone, videoconference, or other remote means, and recorded by any reliable audio or audiovisual method, and encourages remote conferencing by attorneys to move the matter forward)
  - *In re Keurig Order re Remote Depositions* (SDNY March 16, 2020) (provides that all depositions may be taken via telephone, videoconference, or other remote means; extends all unexpired deadlines for a period of 30 days)



# Getting the Other Side to Agree to All-Remote Depositions

## **C. Let the other side know it's the right thing to do.**

- MRPC Rule 3.4(a): “A lawyer shall not . . . unlawfully obstruct another party’s access to evidence or unlawfully . . . conceal a document or other material having potential evidentiary value.”



# Getting the Other Side to Agree to All-Remote Depositions

## **D. Let the other side know that remote depositions were normal even before the virus.**

- New York citations: “Indeed, courts have universally recognized that depositions conducted remotely are a valid, reliable, efficient, and cost-effective method of obtaining required discovery without needless expense. *See, e.g., Davis v. Farrell*, No. 16 Civ. 4874, 2017 WL 2817051, at \*2-3 (E.D.N.Y. June 29, 2017) (recognizing deposition via Skype as acceptable alternative if defendant could demonstrate undue burden of traveling from New Hampshire to New York); *Shanghai Weiyi Int’l Trade Cov. Focus 2000 Corp.*, No. 15 Civ. 3533, 2017 WL 2840279, at \*6 (S.D.N.Y. June 27, 2017) (allowing a deposition to take place via Skype); *SEC v. Aly*, 320 F.R.D. 116,



## Getting the Other Side to Agree to All-Remote Depositions

119 (S.D.N.Y. 2017) (requiring deposition to proceed by videoconference, which “is frequently a preferred solution to mitigate the burden of a deposition location inconvenient to one or both sides”); *Estate of Gerasimenko v. Cape Wind Trading Co.*, 272 F.R.D. 385, 389 (S.D.N.Y. 2011) (explaining that “telephone depositions are a presumptively valid means of discovery”) (citations and quotation marks omitted).



## Getting the Other Side to Agree to All-Remote Depositions

- “The ongoing health crisis requires parties and their counsel to make reasonable adjustments to prevent cases from coming to a standstill. While remaining sensitive to the demands that this crisis has placed on all of us, courts around the country are rejecting arguments indistinguishable from the ones made by Gold in this litigation and ordering that depositions move forward remotely rather than delaying them indefinitely. ... Other courts across the country have issued orders encouraging or even requiring depositions and court proceedings to utilize readily available technology for



## Getting the Other Side to Agree to All-Remote Depositions

remote participation ... Remote depositions eliminate travel by any attorney, witness, or court reporter. The technology supports an unlimited number of participants without the physical presence of a court reporter or any attorney with the witness. The service does not require that the witness be technologically savvy, only requiring the witness to click on a link in an email. All the witness needs is a computer with a camera and an internet connection.”

<https://www.publicjustice.net/wp-content/uploads/2020/03/Corker-v.-Costco-Plaintiffs%E2%80%99-Opposition-To-Gold-Coffee-Roaster-Inc.%E2%80%99s-Motion-for-Protective-Order-to-Limit-Scope-and-to-Postpone-30B6-Deposition-filed-March-25-2020.pdf>



# Best Practices for Noticing a Remote Deposition

- With so many governmental directives aimed at social distancing to prevent the spread of Corona Virus, many court jurisdictions are allowing remote depositions, where the deponent, stenographer and attorneys are all in separate locations.
- All new deposition notices should still comply with your jurisdictions requirements for deposition notices. They should contain the date and time for the deposition. But they should now also indicate that the deposition will be held remotely and advise that videoconferencing log-in information will be circulated no later than 5 days prior to the scheduled deposition. If you had



# Best Practices for Noticing a Remote Deposition

previously noticed your deposition, you should now serve an amended deposition to indicate that the deposition will be held remotely.

- Service of deposition notices or amended notices should be done by e-mail or any other agreed upon electronic means.



# Best Practices for Noticing a Remote Deposition

- Parties should stipulate on the record at the outset of the deposition that objections to the deposition being conducted remotely, and objections to the transcripts being used at trial, based on the method of conducting the deposition are waived.
- As a reminder, always double check to see if the jurisdiction that you are practicing in has issued their own guidelines for conducting remote depositions. Those guidelines should then be incorporated into firm templates.

# Template Stipulation for Remote Depositions

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JOHN DOE,

20-CV-12345

*Plaintiff,*

v.

ABC COMPANY, INC.,

*Defendant.*

**JOINT STIPULATION FOR CONDUCTING REMOTE DEPOSITIONS**

WHEREAS, various governmental directives aimed to facilitate social distancing and to protect the health and safety of the public in light of the COVID-19 pandemic have been issued,

WHEREAS, the parties have conferred and desire to continue the discovery process,

IT IS HEREBY STIPULATED AND AGREED, by and between Plaintiff and Defendants, through their undersigned counsel, that

1. Pursuant to Fed. R. Civ. P. 30(b)(5), the parties agree and stipulate that during the COVID-19 public health crisis—and in accordance with state, federal, and world health organizations' guidance—a deposition will be deemed to have been conducted “before” an officer authorized by Fed. R. Civ. P. 28 to administer oaths so long as that officer attends the deposition via the same remote means (e.g., video conference) used to connect all other remote participants.

2. Any remote depositions conducted may be admitted at trial with the same effect as a deposition conducted and recorded in-person.

3. Technical difficulties with videoconferencing participation shall not constitute grounds for rendering inadmissible a deposition that otherwise would be admissible into evidence. Shall technical difficulties prevent the deposition from taking place or continuing, the parties will reconvene the deposition at the next available date and time for the parties and witness.

4. Nothing in this Stipulation prevents the parties from conducting in-person depositions once the COVID-19 public health risks subside and mitigation measures, including social distancing, meant to reduce the increase in person-to-person transmission of the virus are lifted. The parties must conduct themselves in a good faith effort to best fulfill the goals of Fed. R. Civ. P. 1 while avoiding unnecessary health risks in light of the COVID-19 pandemic.

5. Any objections based on the manner of taking this deposition, as well as any objections to the admissibility at trial of this testimony based on the manner of taking this deposition are waived.

6. Facsimile or electronic signatures shall be treated as originals.

Dated: \_\_\_\_\_, 2020

Respectfully submitted,

OUTTEN & GOLDEN LLP  
685 Third Avenue, 25th Floor  
New York, NY 10017  
Tel: (212) 245-1000  
Fax: (646) 509-2071

*Attorneys for Plaintiffs*

Dated: \_\_\_\_\_, 2020

Respectfully submitted,

*Attorneys for Defendants*

# Example of State Template Deposition Notice

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

**JOHN DOE,**

Plaintiff,

v.

**ABC COMPANY, INC.**

**INDEX NO. 123456/20**

Defendant.

**PLAINTIFF'S NOTICE OF DEPOSITION**

PLEASE TAKE NOTICE THAT Plaintiff, **John Doe**, by and through his undersigned counsel, will take the deposition of **Jane Roe**. The deposition will begin at **XX:XX** am on **XXX, XX, XXXX**, or such other date to which the Parties may mutually agree, and continue for up to seven (7) hours of direct examination. The deposition will be taken before a court reporter, notary public or other person authorized by law to administer oaths and take depositions, and the deposition testimony may be recorded by audio, audiovisual or stenographic means.

NOTICE IS FURTHER GIVEN that we reserve the right to conduct this deposition utilizing the secure web-based deposition option afforded by alternative video teleconferencing services or telephonically only to provide remote access for those parties wishing to participate in the deposition via the internet and/or telephone.

**ALSO TAKE NOTICE THAT**, the court reporter may also be remote via one of the options above for the purposes of reporting the proceeding and may or may not be in the presence of the deponent. Please contact the noticing attorney at least five (5) calendar days prior to the deposition to advise that it is your desire to appear via this remote participating means so that the necessary credentials, call-in numbers, testing and information, if necessary, can be provided to you prior to the proceedings. In addition, we also reserve the right to utilize instant visual display technology such that the court reporter's writing of the proceeding will be displayed simultaneous to their writing of same on one's laptop, iPad, tablet or other type of display device connected to the court reporter.

Counsel for all parties will be required to stipulate on the record their consent to this manner of deposition; and their waiver of any objection to this manner of deposition, including any objection to the admissibility at trial of this testimony based on this manner of deposition.

By: \_\_\_\_\_  
**OUTTEN & GOLDEN LLP**  
685 Third Avenue, 25th Floor  
New York, New York 10017  
Telephone: (212) 245-1000  
Facsimile: (646) 509-2060  
Email:

*Attorneys for Plaintiff*



# Examples of Local Rules and Rules of Civil Procedure & Evidence for Video Depositions

## A. FRCP Rule 28

- Preferably, counsel is not the one to operate the video camera, but neither FRCP 28(a) or FRCP(c) prohibits party's attorney from operating video camera during course of video deposition. *Ott v. Stripe Law Firm*, 169 F.R.D. 380 (E.D. Okla. 1996).



# Examples of Local Rules and Rules of Civil Procedure & Evidence for Video Depositions

## B. FRCP Rule 30 & FRE Rule 901

- Notice of the deposition must include the means by which the deposition will be recorded. FRCP 30(b)(3).
- When the parties have stipulated to conducting a deposition by remote means, or the court has ordered as such, the deposition “takes place” where the deponent answers the questions. FRCP 30(b)(4).



# Examples of Local Rules and Rules of Civil Procedure & Evidence for Video Depositions

## B. FRCP Rule 30 & FRE Rule 901

- The officer must begin the deposition with an on-the-record statement that needs to be repeated on every tape if more than one tape is used to record, which includes:
  - the officer's name and business address;
  - (ii) the date, time, and place of the deposition;
  - (iii) the deponent's name;
  - (iv) the officer's administration of the oath or affirmation to the deponent; and
  - (v) the identity of all persons present.

FRCP 30(b)(5)(A)-(B).



# Examples of Local Rules and Rules of Civil Procedure & Evidence for Video Depositions

## B. FRCP Rule 30 & FRE Rule 901

- When the deposition is completed, the officer must state so and must set out any stipulations made by the attorneys about custody of the transcript or recording. FRCP 30(b)(5)(c).
- To authenticate depositions, the officer must certify in writing that the witness was duly sworn and that the deposition accurately records the witness's testimony. In different jurisdictions, the oath is required to be done on videotape. FRE 901(b)(10); FRCP 30(f); FRCP 28



# Examples of Local Rules and Rules of Civil Procedure & Evidence for Video Depositions

## B. FRCP Rule 30 & FRE Rule 901

- Each court may have different preferences, but unless otherwise ordered, the officer must seal the deposition in an envelope or package bearing the title of the action and marked “Deposition of [witness’s name]” and must promptly send it to the attorney who arranged for the transcript or recording. FRE 901(b)(10); FRCP 30(f); FRCP 28.



# Examples of Local Rules and Rules of Civil Procedure & Evidence for Video Depositions

## **C. FRE Rule 902(13) and (14)**

- To be self-authenticating, electronic records must be generated by an electronic process or system that produces an accurate result, or the data must be copied from an electronic device or storage medium by process of digital identification, as shown by certification by the officer.

## **D. FRCP Rule 32**

- A transcript of the videotaped deposition will be required by Rule 26(a)(3)(B) and Rule 32(c) if the deposition is later to be offered as evidence at trial or on a dispositive motion under Rule 56.



# Examples of Local Rules and Rules of Civil Procedure & Evidence for Video Depositions

## **E. New York – State Courts, 22 CRR-NY 202.15**

- Notice of deposition must include that it is to be videotaped, and the name and address of the videotape operator and of the operator's employer.
- Deposition must begin by one of the attorneys or operator stating on camera:
  1. operator's name and address;
  2. name and address of the operator's employer;
  3. the date, the time and place of the deposition;
  4. the party on whose behalf the deposition is being taken.



# Examples of Local Rules and Rules of Civil Procedure & Evidence for Video Depositions

## **E. New York – State Courts, 22 CRR-NY 202.15**

- More than one camera may be used.
- Once the deposition is over, a statement shall be made on camera that the recording is completed.
- The videotape must be shown to the witness for examination, unless such showing and examination are waived by witness and parties.
- Technical data, like recording speeds and other information needed to replay or copy the tape, must be included on copies of the videotaped deposition.



# Examples of Local Rules and Rules of Civil Procedure & Evidence for Video Depositions

## E. New York – State Courts, 22 CRR-NY 202.15

- Copies of videotaped depositions are permitted, and a party may arrange to have a stenographic transcription made of the deposition at his or her own expense.
- A certification of the officer who swore in the witness and the witness must be attached to the original videotape recording, unless the witness has waived the right to a showing and examination of the videotape.



# Examples of Local Rules and Rules of Civil Procedure & Evidence for Video Depositions

## E. New York – State Courts, 22 CRR-NY 202.15

- The person offering the videotaped deposition at trial has the responsibility of providing whatever equipment and personnel necessary for presenting such videotape deposition.
- Transcripts of deposition testimony will be used for on appeal, as is the usual process. If a party wants to request a viewing of the portions of the deposition, in lieu of transcriptions, but, in such case, a transcript of pertinent portions of the deposition shall be filed as required by the court.



# Examples of Local Rules and Rules of Civil Procedure & Evidence for Video Depositions

## F. New York – WDNY USDC L.R. Civ. P. 30

- A court order is required when conducting a videotaped deposition, without the use of a stenographic record.
- The camera operator shall be identified. An employee of the attorney who noticed the deposition may act as the camera operator.
- The camera must be directed at the witness, showing their head and shoulders view, except where close ups of exhibits are requested by questioning attorney.



# Examples of Local Rules and Rules of Civil Procedure & Evidence for Video Depositions

## F. New York – WDNY USDC L.R. Civ. P. 30

- Attempts to resolve objections made during deposition must be made before trial.
  - Any unresolved objections must be submitted by the party seeking to use the videotaped deposition at trial by motion in limine at any time after the deposition but no later than 7 days before trial.
- To comply with the Court's ruling on objections, the party seeking to use the video deposition must notify opposing counsel of the transcript pages and line numbers the party plans to delete from the video. If the objection is overruled, it need not be deleted, but the Court may give an instruction, if requested, at the time the video is shown regarding objections heard on the video.



# Examples of Local Rules and Rules of Civil Procedure & Evidence for Video Depositions

## F. New York – WDNY USDC L.R. Civ. P. 30

- The edited video, conforming to objections or stipulations, must be provided to opposing counsel at least three (3) days before showing the video.
- Opposing counsel may then object if it does not comply with the Court's ruling or parties stipulations, or if the video is of poor quality. These objections must be made in writing and served at least 24 hours before the video is to be shown.
- Attempts must be made to use a format that is compatible with the Court's display equipment, or provide their own.



# Examples of Local Rules and Rules of Civil Procedure & Evidence for Video Depositions

## G. New York – Other Federal Courts

*Neither the U.S. District Court for the Southern, Northern, or Eastern Districts of New York have any local rules relating to video depositions.*



# Examples of Local Rules and Rules of Civil Procedure & Evidence for Video Depositions

## H. District of Columbia

- If a deposition is recorded by means that is not stenographic means, then the storage media must be clearly identified with:
  1. The name of the deponent,
  2. The date of the deposition, and
  3. The title of the action



# Examples of Local Rules and Rules of Civil Procedure & Evidence for Video Depositions

## H. District of Columbia

*The U.S. District Court for the District of Columbia does not have local rules relating to video depositions.*



# Examples of Local Rules and Rules of Civil Procedure & Evidence for Video Depositions

## I. Virginia – State Courts, Va. Sup. Ct. R. 4:7A

- The deposition must begin with an oral or written statement on camera which includes:
  1. Each operator's name and business address or, if applicable, the identity of the video conferencing or teleconferencing proprietor and locations participating in the video conference or teleconference;
  2. The name and business address of the operator's employer;
  3. The date, time and place of the deposition; See FRCP 30(b)(4)(the deposition “takes place” where the deponent answers the questions).



# Examples of Local Rules and Rules of Civil Procedure & Evidence for Video Depositions

## I. Virginia – State Courts, Va. Sup. Ct. R. 4:7A

4. The caption of the case;
5. The name of the witness;
6. The party on whose behalf the deposition is being taken;
7. With respect to video conferencing or teleconferencing, the identities of persons present at the deposition and the location of each such person;  
and
8. Any stipulations by the parties



# Examples of Local Rules and Rules of Civil Procedure & Evidence for Video Depositions

## I. Virginia – State Courts, Va. Sup. Ct. R. 4:7A

- Everyone who is present should be identified on camera.
- The oath must be administered on camera.
- If the deposition requires more than one videotape, then the end of each tape and the beginning of each succeeding tape shall be announced on camera.
- The conclusion of the deposition must be clearly stated on camera.
- Any stipulations by counsel regarding custody of the original audio-visual file and exhibits may be made on camera.



# Examples of Local Rules and Rules of Civil Procedure & Evidence for Video Depositions

## I. Virginia – State Courts, Va. Sup. Ct. R. 4:7A

- There should be an original file of the recording that is not to be altered or edited. Any editing made as a result of court order or stipulations must be made on copies of the video.
- For appeals, the appellant must request a written transcript to be prepared and filed with the clerk of the portion of audio-visual deposition made a part of the record in trial court. Additionally, the appellee may file additional portions of the deposition to the clerk.



# Examples of Local Rules and Rules of Civil Procedure & Evidence for Video Depositions

## I. Virginia – State Courts, Va. Sup. Ct. R. 4:7A

- Video depositions may be used the same way written transcripts of depositions are used.
- Requirements to present deposition to the witness under Rule 4:5(e ) do not apply to videotape depositions without a transcript.
  - Va. Sup. Ct. R. 4:5(e): *Submission to Witness; Changes; Signing.* When the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties.



# Examples of Local Rules and Rules of Civil Procedure & Evidence for Video Depositions

## **I. Virginia – State Courts, Va. Sup. Ct. R. 4:7A**

Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 21 days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully



# Examples of Local Rules and Rules of Civil Procedure & Evidence for Video Depositions

## I. Virginia – State Courts, Va. Sup. Ct. R. 4:7A

as though signed unless on a motion to suppress under Rule 4:7(d)(4) the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.



# Examples of Local Rules and Rules of Civil Procedure & Evidence for Video Depositions

## I. Virginia – Federal Courts

*Neither the U.S. District Court for the Eastern District of Virginia or the Western District of Virginia have any local rules relating to video depositions.*



# Examples of Local Rules and Rules of Civil Procedure & Evidence for Video Depositions

## J. Maryland – State Courts, Md. Rule 2-416

- Notice must include the method of recording. Md. Rule 2-412.
- A party can request or motion to postpone a deposition, or begin subject to being continued, if the Court finds that the deposition is to be taken before the moving party has an adequate opportunity to prepare.
- The operator may be an employee of the attorney but must be competent to set up and operate the equipment but must not distort the appearance or demeanor of participants in the deposition.



# Examples of Local Rules and Rules of Civil Procedure & Evidence for Video Depositions

## J. Maryland – State Courts, Md. Rule 2-416

- The deposition must begin with an oral or written statement on camera which includes
  1. Each operator's name and business address or, if applicable, the identity of the video conferencing or teleconferencing proprietor and locations participating in the video conference or teleconference;
  2. The name and business address of the operator's employer;
  3. The date, time and place of the deposition; See FRCP 30(b)(4)(the deposition “takes place” where the deponent answers the questions).



# Examples of Local Rules and Rules of Civil Procedure & Evidence for Video Depositions

## J. Maryland – State Courts, Md. Rule 2-416

4. The caption of the case;
5. The name of the witness;
6. The party on whose behalf the deposition is being taken;



# Examples of Local Rules and Rules of Civil Procedure & Evidence for Video Depositions

## J. Maryland – State Courts, Md. Rule 2-416

- The officer must identify themselves on camera.
- The oath must be done on camera.
- The conclusion of the deposition must be clearly stated on camera.
- When more than one tape is used, the operator shall announce the end of each tape and the beginning of the next tape.



# Examples of Local Rules and Rules of Civil Procedure & Evidence for Video Depositions

## J. Maryland – State Courts, Md. Rule 2-416

- Deposition must be timed by a clock or indicator that shall show on camera or on the recording whenever possible each hour, minute, and second of the deposition.
- The party intending to offer a video deposition must notify the court and all parties in writing of that intent and of the parts of the deposition to be offered with sufficient time to allow for objections to be made and acted upon before trial or hearing.



# Examples of Local Rules and Rules of Civil Procedure & Evidence for Video Depositions

## J. Maryland – State Courts, Md. Rule 2-416

- Objections should be made with sufficient time to allow for rulings before the trial.
- Court may order an edited version of the video deposition be made on a copy of the video deposition, the original of the recording must remain unedited.
- After the deposition, the officer must review the video deposition promptly and attach it to a certificate that the recording is correct and complete record of the testimony given by the deponent.



# Examples of Local Rules and Rules of Civil Procedure & Evidence for Video Depositions

## J. Maryland – Federal Courts

*The U.S. District Court of the District of Maryland does not have local rules relating to video depositions.*



# Examples of Local Rules and Rules of Civil Procedure & Evidence for Video Depositions

## K. California – State Courts

- Any party may participate in the videoconference deposition by providing notice three (3) court days before the deposition. Cal. Rules Ct. R. 3.1010(b).
- The party offering the video deposition into evidence must lodge a transcript of the deposition with the court. At the time the recording is played, the party must identify on the record the page and line numbers where the testimony presented appears in the transcript. Cal. Rules of Ct., R. 2.1040.



# Examples of Local Rules and Rules of Civil Procedure & Evidence for Video Depositions

## K. California – State Courts

- This transcript must be served and filed a copy of the transcript cover showing the witness name and a copy of the pages of the transcript where the testimony presented appears and the pages must be marked to identify testimony that was offered into evidence. This must be done when evidence closes or within five days after the recording is presented into evidence, whichever is later. Cal. Rules of Ct., R. 2.1040.
  - *This is not required if the court reported takes down the content of all portions of the recording that were offered into evidence. Cal. Rules of Ct., R. 2.1040.*



# Examples of Local Rules and Rules of Civil Procedure & Evidence for Video Depositions

## **L. California - U.S. District Court for the Southern District of California**

- Rule 16.1: The pretrial order shall include a '6. A list of all deposition transcripts by page and line, or videotape depositions by section that will be offered at trial. “



# Examples of Local Rules and Rules of Civil Procedure & Evidence for Video Depositions

## L. California – Other Federal Courts

*Neither the U.S. District Court for the Central, Eastern, or Northern Districts of California have any specific relating to video depositions.*



# Examples of Local Rules and Rules of Civil Procedure & Evidence for Video Depositions

## **L. Illinois – State Courts, Ill. Rule 206(g)&(h)**

- Video depositions must begin by the operator of the equipment stating, on camera:
  1. The operator's name and address,
  2. The date, time and place of the deposition,
  3. The caption of the case,
  4. The name of the witness,
  5. The party on whose behalf the deposition is being taken, and
  6. The party at whose instance the deposition is being recorded on an audio-visual recording device.



# Examples of Local Rules and Rules of Civil Procedure & Evidence for Video Depositions

## **L. Illinois – State Courts, Ill. Rule 206(g)&(h)**

- The officer must state their name and swear the witness on camera.
- At the end of the deposition, the operator must state so on camera.
- If the deposition requires the use of more than one videotape, must state that it is the end of each recorded segment and the beginning of each succeeding segment shall be announced on camera by the operator.
- Operator takes initial custody of recording and must run through the recording to determine the exact length of time of the deposition.



# Examples of Local Rules and Rules of Civil Procedure & Evidence for Video Depositions

## • L. Illinois – State Courts, Ill. Rule 206(g)&(h)

- Operator must sign an affidavit stating the length of time of the deposition and certify that the recording is a true record of the deposition and certify that the operator has not edited or otherwise altered the recording.
- A party must make a request at the conclusion of taking the deposition for the operator to make a copy of the videotape and deliver it to the party.
- Recommended that the evidence to be presented to the deponent be pre-marked before being provided to the officer administering the oath and other parties.



## • Rules on Remote Swearing-In

### A. Good Resources

- <https://www.nationalnotary.org/notary-bulletin/blog/2020/03/states-emergency-action-remote-notarization>



## ● Rules on Remote Swearing-In

### **B. California**

- Emergency rule 11. Depositions through remote electronic means
  - (a) Deponents appearing remotely Notwithstanding any other law, including Code of Civil Procedure section 41 2025.310(a) and (b), and rule 3.1010(c) and (d), a party or nonparty deponent, at their election or the election of the deposing party, is not required to be present with the deposition officer at the time of the deposition.
  - (b) Sunset of rule 4 5 This rule will remain in effect until 90 days after the Governor declares that the 6 state of emergency related to the COVID-19 pandemic is lifted, or until amended or 7 repealed by the Judicial Council.

<http://www.courts.ca.gov/documents/2020-04-06-rules-effective-04-06-2020.pdf>



## • Rules on Remote Swearing-In

### C. Illinois

- II. 206(h) Remote Electronic Means Depositions. Any party may take a deposition by telephone, videoconference, or other remote electronic means by stating in the notice the specific electronic means to be used for the deposition, subject to the right to object. For the purposes of Rule 203, Rule 205, and this rule, such a deposition is deemed taken at the place where the deponent is to answer questions. Except as otherwise provided in this paragraph (h), the rules governing the practice, procedures and use of depositions shall apply to remote electronic means depositions. [...] (1) The deponent shall be in the presence of the officer administering the oath and recording the deposition, unless otherwise agreed by the parties.



## • Rules on Remote Swearing-In

### **D. New York**

- NY 3113(d) - The parties may stipulate that a deposition be taken by telephone or other remote electronic means and that a party may participate electronically. The stipulation shall designate reasonable provisions to ensure that an accurate record of the deposition is generated, shall specify, if appropriate, reasonable provisions for the use of exhibits at the deposition; shall specify who must and who may physically be present at the deposition; and shall provide for any other provisions appropriate under the circumstances. Unless otherwise stipulated to by the parties, the officer administering the oath shall be physically present at the place of the deposition and the additional costs of conducting the deposition by telephonic or other remote electronic means, such as telephone charges, shall be borne by the party requesting that the deposition be conducted by such means.



## • Rules on Remote Swearing-In

### **F. District of Columbia**

- Right now, court reporters are not permitted to administer the oath remotely. The deposing attorney should recognize and stipulate to this on the record, the witness should verbally acknowledge that they swear to testify truthfully under penalty of perjury, and then opposing counsel should agree on the record.



## ● Rules on Remote Swearing-In

### **G. Virginia**

- VA Code 8.01-412.4- In addition, all counsel present on behalf of any party or witness shall identify themselves on camera. The oath for witnesses shall be administered on camera. If the length of a deposition requires the use of more than one recording unit, the end of each unit and the beginning of each succeeding unit shall be announced on camera. At the conclusion of a deposition, a statement shall be made on camera that the deposition is concluded. A statement may be made on camera setting forth any stipulations made by counsel concerning the custody of the audio-visual recording and exhibits or other pertinent matters.



## • Rules on Remote Swearing-In

### **H. Maryland**

- MD Rule 2-416(f) Procedure. The deposition shall begin by the operator stating on camera or on the electronic audio or audio-video recording: (1) the operator's name and address, (2) the name and address of the operator's employer, (3) the date, time, and place of the deposition, (4) the caption of the case, (5) the name of the deponent, and (6) the name of the party giving notice of the deposition. The officer before whom the deposition is taken shall identify himself or herself and swear the deponent on camera or on the electronic audio or audio-video recording. At the conclusion of the deposition, the operator shall state on camera or on the electronic audio or audio-video recording that the deposition is concluded. When more than one tape, disk or similar electronic data unit of

# REMOTE DEPOSITIONS



**DOUGLAS EVANS DEXTER**  
Partner  
Farella Braun + Martel LLP





# Make Sure All Your Technical Bases are Covered

- **Train witness & lawyers**
- **Test Equipment**
  - Devices
    - Computer v. Mobile
    - Consider phone audio
    - Consider shipping hardware
  - Internet Speed
    - <https://www.speedtest.net>. Recommends 10 megabits per second (Mbps) for video chatting, and 25 Mbps for HD streaming.
  - Practice turning video on and off for break transitions.
- **Consider Alternative Hosting Options**

A decorative graphic on the left side of the slide, consisting of a complex network of blue lines and dots, resembling a circuit board or a digital network. The lines are of varying thickness and connect various circular nodes, some of which are solid blue and others are hollow. The pattern is dense and occupies the left third of the slide.

## • Managing Exhibits

- Before the day of the deposition, you should get all your exhibits ready to go in a folder on your desktop.
  - Avoid same-day production
- Consider
  - Shipping hard copies
  - Grouping to reduce introduction process
  - Avoiding obvious names
- If you are defending the deposition, you will also want to have a file ready to store the exhibits that the other side uses.
- Practice presenting the exhibits on the videoconferencing platform.



## • Managing Exhibits

- Consider having separate persons questioning and presenting exhibits.
- An exhibit can be of any type of file, but everyone participating must already have a program that can open that file type on their computer.
  - Otherwise, they'll be unable to view the exhibit.
  - Alternatively you can:
    - open the exhibit yourself and present it via screen share.
    - Convert to PDF file



## • Look Good on Camera

- If using two screens, consider which camera you will be looking into.
- The camera should be placed at your eye level.
  - If using a laptop, raise it until your eyes are at the same level as the camera lens.
- Make sure your head is at the top of the frame with not a lot of space above your head.
- Choose a simple background with not many personal effects
  - Consider using a screen.
  - Avoid backlight



## • Look Good on Camera

- When it comes to clothing, go for solid, bold colors, avoiding:
  - patterns, stripes, and plaids
  - colors that blend into your background to avoid the floating head effect.
- Test this too before deposition
- For additional video conferencing best practices, please review the links below:
  - <https://www.owllabs.com/blog/video-conferencing-etiquette>
  - <https://www.entrepreneur.com/article/238902>
  - <https://medium.com/pcmag-access/8-tips-for-better-video-conference-calls-52c58ae9eef9>



# Prevent Tampering

**Questions at the beginning of the deposition to confirm who is listening and help reduce any improper witness influence:**

- At the beginning of the deposition, ask the deponent on the record:
  - Is there anybody else in the room with you?
  - Do you have any notes or other documents in front of you?
  - Do you have any other applications open on your computer?
- Instruct the deponent to keep all other applications, particularly email and instant messenger closed.



## Prevent Tampering

- Consider asking witness to pan their camera around the room to show that there is nobody else in the room and they do not have any notes/documents.
- **Note:** Witnesses can minimize Zoom and do other things on their computer without it showing up on the application, other than through visual clues. If at any point during the deposition, it appears the witness is not paying full attention, ask again whether they have any other applications open on their computer and instruct them to keep all unnecessary applications closed.
- Ensure no private chat capability on platform
- Set up private virtual break rooms



# Housekeeping Questions for Remote Depositions

## **Questions related to exhibits:**

- Confirm that the exhibit has loaded on the deponent's screen ("Let me know when the exhibit appears on your screen.")

## **Questions after breaks and/or at the end of the deposition related to outside influence on witness testimony:**

- Did you speak to anybody during the break?
- Did you review any documents or notes during the break?
- Did you send or receive any emails or text messages during the break/deposition?



# Housekeeping Questions for Remote Depositions

## Questions at the end of the deposition:

- At any point during our questioning, did communicate with anyone else about the substance of your answers via text, email, or other electronic method?



# Witness Control

**Anticipate that you will not be able to rely on many ways in which you control the room in person**

- Consider leading more with documents
- Remote witnesses risk
  - Emotional Detachment
  - Quicker Exhaustion
  - Lesser Attention
  - Inefficiency
- On the other hand, legal team observations of one deposition are more efficient



## • Witness Control

### **Defending remote depositions has its challenges as well**

- Preparation sessions are generally remote as well
  - Sustaining attention is more challenging than in person
  - Try to use a platform the same or similar to that to be used in deposition
  - Consider efficient use of documents
  - Discuss anticipated environment during deposition
- Watch your client's video appearance during the deposition
- Encourage your witness to use Gallery View
- Particularly monitor for witness rushing
- Avoid muting yourself
- Admonish your client orally

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